(1998) 02 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4468 of 1991

Mst. Chunni APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 18

Citation : AIR 1998 Raj 152

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : J.R. Beniwal, for the Appellant; C.R. Jakhar, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Gupta, J.—The petitioner''s ease is that in the year 1975 a land ceiling case was registered against respondent No. 4 Arjun Rani, her son, under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 as in the revenue record the land was entered in the name of respondent No. 4 though the land was being held by them jointly. In that matter, respondent No. 4 submitted his return and pleaded that Khasra No. 696 measuring 22.10 bighas has been given to his mother in partition on 20-12-1972. The Assessing Authority was satisfied with the reply of respondent No. 4 and dropped the proceedings under the Act of 1973. However, the Stale Govt. reopened the ceiling cases on 29-8-1980 and the Addl. Collector, by his order dated 6 -4-1985 held that the land measuring 17-15 bighas of Khasra No. 696 in Village Asopa was liable to be resumed under the ceiling law. This order was challenged by the petitioner before the Revenue Board in an appeal but the appeal was dismissed on 5-7-1991. It has been averred that the Addl. Collector and the Board of Revenue have committed serious illegality in not taking into consideration the relevant documents showing the partition of the land between the petitioner and respondent No. 4 and as the land was encumbered, it could not be resumed under the ceiling proceedings against respondent No. 4.

2. No written reply has been filed by the respondents.

3. Arguments of Mr. Beniwal, learned counsel for the petitioner, and Mr. Jakhar, learned Addl. Government Advocate, have been heard.

4. The contention of Mr. Beniwal was that the order Ex. 4 was passed in favour of the petitioner which had attained the finality and as the land belonged 10 the petitioner, it was not free from encumbrance and this land could not be taken in ceiling proceedings u/s 18 of the Act of 1973. He has referred to the cases of Badrilal v. State of Rajasthan 1992 RRD 317, Iftekar Ali v. State of Rajasthan 1992 RRD 320 and Bheraram v. Bor 1995 DNJ (Raj) 290.

5. Mr. Jakhar, on the other hand, contended that the Revenue Board has assigned cogent reasons for holding that the petitioner did not have any right in the land sought to be resumed under me ceiling law.

6. The Addl Collector, on reopening the ceiling case, came to the conclusion that respondent No. 4 could only retain 135 bighas of land and 17 Bighas 15 biswas of land was in excess. In the revenue record. Ramjivan was recorded as the Khatedar of the land. After his death, the land was mutated in the name of Arjun Ram. respondent No. 4. The question is whether Chunni had any share in the land left by Ramjivan. The Revenue Board has considered the material available on record and has come to a finding that Ramjivan had died way back in Samval 2003 i.e. much before the Hindu Succession Act, 1956 came into force. At that lime, the Marwar Tenancy Act was in force and the male lineal descendant excluded the widow of the deceased in succession. Obviously, after the death of Ramjivan: Arjun Ram inherited all his land to the exclusion of the widow Chunni. Mr. Beniwal has not been able to assail this finding of the Revenue Board, which is based on the documents produced in the case. Chunni, petitioner was not co-sharer of the land, and therefore, there could not be any occasion for Arjun Ram to have agreed to the partition of the land. Arjun Ram, in his application dated 15-12-1972, has emphatically denied the partition of the land.

7. There is no basis of this contention that there was dispute between the petitioner and Arjun Ram, and therefore, he made that application against the interest of the petitioner. The land is in the name of respondent No. 4. It is obvious that no steps were taken to get the land mutated in the name of the petitioner for long time. In this connection, this fact cannot be lost sight of that immediately after the death of Ramjivan, Chunni had remarried with one Ram Bux in Samvat Year 2005 i.e. much before the coming into force of the Hindu Succession Act. When the petitioner had remarried before the coming into force of the Hindu Succession Act, she could not get any right in the property left by Ramjivan. The obvious conclusion is that the entire land left by Ramjivan was inherited by Arjun Ram, respondent No. 4. It was found that Arjun Ram had more than 35 bighas of land. Therefore, the order, resuming 17 bighas 15 biswas of land, cannot be held to be wrong.

8. The cases referred to deal with the point that person holding land in excess of ceiling area shall have a right to select any land within the ceiling, which he wants to retain, in his possession and where a person holds land, out of which some parts are encumbered and some are not, the selection be made in favour of encumbered land in preference to unencumbered.

9. The contention of Mr. Beniwal was that the land in dispute being encumbered, the Assessee respondent No. 4 was entitled to hold. In the case of Iftekar Ali 1992 RRD 320) (supra), it has been observed that the State Govt. should compel the Assessee of offer unencumbered land first and only after its acquisition, the balance of surplus land has to he acquired from the transferee. The same principle was enunciated in the case of Badri Lal 1992 RRD 317) (supra). In the case of Bheraram 1995 DNJ (Raj) 290) (supra), it was also observed that it was the duty of the transferer to surrender land out of the remaining land left with him after the sale and he could not declare the sold land as surplus by retaining the balance land. There is no quarrel with this proposition of law. The question is whether there was transfer of land by respondent No. 4 in favour of the petitioner and the disputed land is encumbered land. It has been held in the preceding paras that the petitioner had no right whatsoever in the land left by Ramjivan, and the alleged partition cannot be given effect to. Thus, the entire land of Arjun is unencumbered.

10. On a careful consideration of the entire material on record, 1 am of the view that the order passed by the Revenue Board is perfectly legal and calls for no interference.

11. The writ petition being devoid of merit is dismissed.

